IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 21 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

BHARAT FORGE & PRESS IND. PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 21 of 1992

MR MANISH R BHATT for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred for the opinion of this Court:-

"Whether, on the facts and in the circumstance of the case, the Appellate Tribunal was right in law in holding that overall limit of Rs.72,000/prescribd u/s.40(c) of the IT Act, 1961 was applicable for computing disallowance in respect of remuneration benefits and amenities pertaining to directors who were employees of the company and that two separate limits, one for salary and the other for perquisites laid down for employees under sec.40A(5) were not applicable for such computation?"

2. The assessment years involved are assessment years 1982-83 and 1983-84. The common question of law is referred for both the years. The point which was involved in both the years was computation of disallowance in respect of remuneration benefits and amenities pertaining to director employees of the Company. The Income-tax Officer held that the provisions of Section 40A(5) in which there were two separate limits, one for remuneration and other for perquisites would be applicable. The assessee's argument before the Income-tax Officer was that one overall limit of Rs.72,000/- mentioned in Section 40(c) for remuneration benefit and amenities would be applicable as far as directors are concerned. The ITO rejected the said contention of the assessee. Being aggrieved by the order of the Income-tax Officer, the assessee has preferred appeal before the CIT (Appeals) who accepted the assessee's plea and the Tribunal has confirmed the order of the CIT (Appeals) on this point.

In the above premises, the Tribunal has referred the above question.

3. Heard Mr Manish Bhatt, learned Sr. Standing Counsel for the revenue. Nobody appears on behalf of the respondent- assessee though notice was duly served.

4. At the hearing of this Reference, it was submitted by Mr Bhatt that the issue involved in the present reference is squarely covered by the decision of this Court in the case of Ambica Mills Ltd. vs. CIT (1998) 231 ITR 583. This Court has observed in the said decision that whatever expenditure is incurred by the company in respect of the Managing Director or other

Director by way of remuneration or benefit or amenity, would be covered under Section 40(c) and whatever expenditure by way of salary or perquisites is incurred by it in respect of the person, having a dual role of director and employee, in his capacity as an employee will be computed under clauses (i) and (ii) of section 40A(5)(a) of the Income-tax Act. There will thus be no overlapping between the expenditure incurred by a company over a director which falls in clauses (i) and (ii) of section 40(c) and the expenditure incurred by the company of the nature falling in clauses (i) and (ii) of section 40A(5)(a), which would be relatable only to his capacity as an employee where the director is also an employee. These two types of expenditure, namely, one incurred by the company in respect of the director who is also its employee, in his capacity as a director and the other incurred in his capacity as an employee, will thus be worked out independently, and, in view of the proviso to sub-section (5)(a) of section 40A, they will have to be aggregated and expenditure in excess of the ceiling of Rs.72,000 provided in that proviso will not be allowed to be deducted. That is how the provisions of section 40(c) and section 40A(5)(a) read with its first proviso are intended to operate.

5. In view of the above observations made by this Court in the case of Ambica Mills Ltd. (supra), we are of the view that the Tribunal was right in law in holding that overall limit of Rs.72,000 prescribed under section 40(c) of the Act was applicable for computing disallowance in respect of remuneration benefits and amenities pertaining to directors who were employees of the Company and that two separate limits, one for salary and the other for perquisites laid down for employees under Section 40A(5) cannot be applicable for such computation.

We, therefore, answer the question referred to us in favour of the assessee and against the revenue.

6. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-